



June 5, 2001

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR2001-2313

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147976.

The Garland Police Department (the “department”) received a request for all reports concerning the requestor, which you state the department has interpreted to mean any reports mentioning the requestor, whether as a victim of a crime, a suspect in the crime, a witness, or otherwise. You state that the department has released eight complete reports to the requestor, and one redacted report. You claim that the remaining responsive reports are excepted from disclosure under section 552.101 of the Government Code in their entirety, and that the information withheld from the redacted report is also excepted from disclosure under section 552.101. We have considered the exception you claim and reviewed the submitted information.

Section 552.301(b) of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. The department received the written request for information on March 14, 2001. You did not request a decision from this office until March 29, more than ten days after the requestor’s written request. Therefore, we conclude that the department failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex.App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex.App.--Houston[1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. Consequently, as you raise section 552.101 of the Government Code, we will consider your arguments against disclosure of the requested information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Family Code includes provisions that protect the law enforcement records of a child. "Child" is defined as a person who is ten years of age or older and under 17 years of age or a person who is older than seventeen years of age and younger than 18 years of age and is found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. Fam Code § 51.02(1). Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996 are governed by the former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591 (Vernon). Law enforcement records of juvenile conduct that occurred on or after September 1, 1997 are made confidential by section 58.007 of the Family Code. Law enforcement records of juvenile conduct that occurred on or after January 1, 1996 but before September 1, 1997 are not made confidential by statute.

The records at issue concern juvenile conduct that occurred ~~both~~ prior to January 1, 1996, between January 1, 1996 and September 1, 1997, and after September 1, 1997. Therefore, a portion of the records are confidential under the former section 51.14(d) of the Family Code, as well as under section 58.007 of the Family Code, and must be withheld from disclosure pursuant to section 552.101 of the Government Code. We have marked the information to be withheld. The records relating to juvenile conduct occurring between January 1, 1996 and September 1, 1997, as well as those records pertaining to individuals who were not a "child" for purposes of the Family Code, must be released. We have also marked the information to be released.

You also inquire whether the requestor has a special right of access, under section 552.023 of the Government Code, to the information made confidential under the Family Code. The relevant language of section 552.023 states:

(a) A person or person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests.

We do not believe that sections 51.14 and 58.007 of the Family Code are intended solely to protect the privacy interests of the subject juvenile. Moreover, the information at issue is governed by sections 51.14 or 58.007 of the Family Code, and none of the access provisions in these statutes provide for release of the information in this instance. Accordingly, you must withhold from disclosure the information we have marked pertaining to juvenile conduct under section 552.101 of the Government Code.

We also note that the submitted includes a report of a sexual assault of a child. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Because one of the requested documents relates to an allegation of child abuse, this report is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the report in question, which we have marked, is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the department must withhold this report from disclosure under section 552.101 of the Government Code as information made confidential by law. Furthermore, because section 261.201(a) protects all "files, reports, communications, and working papers" related to an investigation of child abuse, the city must not release front page offense report information in cases of alleged child abuse.

To summarize, a portion of the submitted records, which we have marked, are confidential under the former section 51.14(d) of the Family Code, as well as under section 58.007 of the Family Code, and must be withheld from disclosure pursuant to section 552.101 of the

Government Code. The records relating to juvenile conduct occurring between January 1, 1996 and September 1, 1997, as well as those records pertaining to individuals who were not a "child" for purposes of the Family Code, must be released. We have also marked the information to be released. One of the submitted reports must be withheld in its entirety under section 261.201 of the Family Code, in conjunction with section 552.101. Section 552.023 of the Government Code does not give the requestor a right of access to the information made confidential under the Family Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 147976

Encl. Submitted documents

cc: Mr. Jason Simpkins
6149 Bay Island
Garland, Texas 75043
(w/o enclosures)